

1 JAMES F. McCABE (BAR NO. 104686)  
ADRIANO HRVATIN (BAR NO. 220909)  
2 SARAH E. GRISWOLD (BAR NO. 240326)  
MORRISON & FOERSTER LLP  
3 425 Market Street  
San Francisco, California 94105-2482  
4 Telephone: 415.268.7000  
Facsimile: 415.268.7522  
5 Email: jmccabe@mofo.com

6 Attorneys for Defendant  
WASHINGTON MUTUAL BANK  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 HELEN and MARTIN YACK, on behalf of  
13 themselves and all others similarly situated,

14 Plaintiffs,

15 v.

16 WASHINGTON MUTUAL, INC.; SUNLAN-  
020105, LLC; SHERIFF'S DEPARTMENT,  
17 COUNTY OF LOS ANGELES,  
CALIFORNIA; CLERK'S OFFICE, COUNTY  
18 OF BUTTE, CALIFORNIA; and DOES 1-10,

19 Defendants.  
20

Case No. C-07-5858 PJH

**DECLARATION OF JAMES F.  
McCABE IN SUPPORT OF  
DEFENDANT WASHINGTON  
MUTUAL BANK'S REQUEST FOR  
ADMINISTRATIVE RELIEF FROM  
RESPONDING TO PLAINTIFFS'  
AMENDED COMPLAINT**

1 I, JAMES F. McCABE, declare as follows:

2 I am an attorney licensed to practice law in the State of California and am admitted to  
3 practice before this Court. I am a partner with the law firm of Morrison & Foerster LLP, counsel  
4 for Defendant Washington Mutual Bank. I submit this Declaration in Support of Defendant  
5 Washington Mutual Bank's Request for Administrative Relief from Responding to Plaintiffs'  
6 Amended Complaint. I make this Declaration based on personal knowledge. If called as a  
7 witness, I would testify to the facts set forth below.

8 1. On April 2 and 3, 2008, I spoke with Mr. Paik by telephone and asked that he  
9 dismiss the case voluntarily because Plaintiffs Helen and Martin Yack lack standing to assert their  
10 claim. Plaintiffs filed a petition in bankruptcy after the events underlying this suit. That petition  
11 operated to transfer the claim to the bankruptcy trustee. However, the claim did not revert to  
12 Plaintiffs on discharge, since Plaintiffs did not schedule the claim in their bankruptcy petition.  
13 The claim is thus still held by the bankruptcy trustee. I provided Mr. Paik with Plaintiffs'  
14 bankruptcy petition, the discharge order and citations to the controlling authorities. Mr. Paik  
15 declined to dismiss the complaint.

16 2. Attached as Exhibit A is a true and correct copy of Dean Paik's April 4, 2008 letter  
17 to the Court.

18 3. On April 17, 2008, and before filing Washington Mutual's request for  
19 administrative relief, I spoke by telephone with Mr. Paik, and renewed Washington Mutual's  
20 request that Plaintiffs dismiss the complaint. Mr. Paik declined to do so.

21 4. During my April 17 telephone conversation with Mr. Paik, he agreed to extend the  
22 time for defendants to respond or otherwise plead to Plaintiffs' complaint to May 2, 2008.

23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing is true and correct and that this Declaration was executed in San Francisco, California,  
25 on this 17th day of April 2008.

26  
27 /s/ James F. McCabe  
James F. McCabe